HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:5191 OF 2005

Dated: 21.8.2007

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Between:

The Zilla Parishad represented by its Chief Executive Officer
Zillla Parishad, Adilabad. ..Petitioner

And

1. M.A.Khaleel & others ..Respondents.

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:5191 OF 2005

ORDER: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed by the petitioner seeking to call for the records pertaining to the order dated 13.12.2004 passed in O.A.No4036 of 2004 and to set aside the same.

The 1st respondent herein is the applicant. He filed the O.A. seeking to set aside the Memo No:18846/Estt.V/A3/98-5, dated 27.7.2003 by declaring that the applicant is entitled for counting of his service w.e.f. 24.2.1960 and directing the respondents to count the service of the applicant with effect from 24.2.1960 and grant him the notional promotion in the category of U.G.C., Superintendent, M.P.D.O. w.e.f., the date on which his juniors were promoted.

The tribunal having relied on the principles laid down by the Apex Court in the decision reported in UNION OF INDIA VS. LALITHA S.RAO ([1]) and having observed that the applicant is entitled for counting his service from 1960 onwards i.e., from the date of his initial appointment, directed the respondents to count the services of the applicant from the date of his initial appointment i.e., 24.6.1960 when he was appointed in Agriculture Department, for all purposes and also count his seniority for the purpose of promotion as Senior Assistant and also Superintendent and issue orders within two months from the date of receipt of a copy of the order. Having aggrieved by the same, the 3rd respondent has preferred the present writ petition.

Heard the learned counsel and the material available on record as well as the order impugned.

While relying on the Memo No:18846/Estt/-V/A3/99-5, dated 27.6.2003, the main thrust of the argument of the learned standing counsel for the 3rd respondent is that according to the instructions issued in Govt Memo No:371/E.IV/61-3, Planning & Local Administration Department, dated 12.9.1961 read with memo No:126/E.III/96, Planning L.A Department, dated 4.6.1963, the staff appointed by the District Collector and the other Departmental staff working in P.S. and Z.Ps. prior to 1.12.1959 and those who were in service on 12.9.1961 were absorbed in P.S. and Z.Ps after obtaining

necessary ratification by the District Selection Committee. But, these rules are not applicable to the applicant as he was not appointed by the District Collector and he was appointed after 1.12.1959. Therefore, the tribunal is not justified in passing the order impugned.

On the other hand, it is contended by the learned counsel for the applicant that since the applicant was in service in 1960 in Agricultural Department of Panchayat Raj Wing, his services can be counted for the purpose of absorption as on 12.9.1961. Therefore, the order of the tribunal needs no interference.

At this stage of the proceedings, it is relevant to note the spirit of the Govt Memo No:18846/Estt.V/A3/99-5, dated 27.6.2003 whereunder as per the instructions issued in Govt Memo No:371/E.IV/61-3, Planning & Local Administration Department, dated 12.9.1961 read with memo No:126/E.III/96, Planning L.A Department, dated 4.6.1963, the staff appointed by the District Collector and the other Departmental staff working in P.S. and Z.Ps. prior to 1.12.1959 and those who were in service on 12.9.1961 were absorbed in P.S. and Z.Ps after obtaining necessary ratification by the District Selection Committee.

Now, coming to the facts of the case on hand, the fact that remains undisputed is that the applicant was not appointed by the District Collector and therefore, it can easily be inferred that his case cannot be brought under the shelter of Govt Memo No:371/E.IV/61-3, Planning & Local Administration Department, dated 12.9.1961. But, the tribunal without considering this aspect and by simply relying on the decision of the Apex Court (citation supra) which had no application to the facts of the case on hand, has erroneously passed the order impugned. Therefore, We have no hesitation to hold that the order impugned herein is liable to be set aside.

Accordingly, this writ petition is allowed setting aside the order impugned.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 21st August, 2007
Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

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WRIT PETITION No:5191 OF 2005

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

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21st August, 2007

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[1] AIR 2001 SC 1792